

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 12 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0136-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
JAMES KEVIN FRAZIER,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2010005525001DT

Honorable Phemonia L. Miller, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney  
By Diane Meloche

Phoenix  
Attorneys for Respondent

James Kevin Frazier

Florence  
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Petitioner James Frazier seeks review of the trial court’s order denying his of-right petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a

clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Frazier has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Frazier was convicted of three counts of attempted child molestation. As stipulated in that agreement, the trial court imposed a ten-year term of imprisonment on the first count and suspended the imposition of sentence and placed Frazier on lifetime probation for the remaining two counts, to begin upon his discharge from prison. Frazier thereafter filed a timely notice of post-conviction relief, indicating he was raising a claim of ineffective assistance of counsel. Appointed counsel filed a notice stating he had reviewed the record and was “unable to find any claims for relief to raise in post-conviction relief proceedings.” In his pro se petition, to the extent we understand it, Frazier raised various constitutional arguments and contended his sentence violated federal sentencing law, as well as the constitutional protection against double jeopardy. The trial court summarily denied relief.

¶3 On review, again in a rather confusing fashion, Frazier cites various constitutional provisions and appears to argue primarily that his rights against double jeopardy were violated and that his sentence violated federal sentencing law. To the extent we understand his arguments, they are waived or without merit.

¶4 First, federal sentencing law does not apply to Frazier’s state law convictions. *See, e.g.*, 18 U.S.C. § 3551(a) (federal sentencing provisions apply to defendants “found guilty of an offense described in any Federal statute”). Thus, whether his sentence complies with such law is irrelevant. Next, to the extent Frazier argues joinder was inappropriate in regard to the three charges against him or asserts that newly

discovered evidence exists, we do not address those claims because they were not raised or developed below. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present” for review). We likewise do not address any claim of ineffective assistance of counsel because although Frazier cited such a claim in his notice, he did not develop any argument in his petition below, nor does he do more than state that counsel was ineffective on review. Nor do we address the numerous assertions of various constitutional rights violations asserted below and on review as those claims are not properly developed, and, in most cases, were waived by Frazier’s guilty plea. *See State v. Moreno*, 134 Ariz. 199, 200, 655 P.2d 23, 24 (App. 1982) (defendant who pleads guilty waives right to appeal “all nonjurisdictional defenses, errors and defects occurring prior to the plea proceedings”), *disapproved on other grounds by State ex rel. Dean v. Dolny*, 161 Ariz. 297, 778 P.2d 1193 (1989).

¶5 Finally, we also reject what appears to be Frazier’s primary argument—that his rights against double jeopardy were violated when the court ordered his probationary term to begin upon his discharge from imprisonment. He argues he “was twice punished for the same victim receiving multiple sentences to run consecutively.” But, although “[t]he Double Jeopardy Clauses of the United States and Arizona Constitutions protect criminal defendants from multiple . . . punishments for the same offense,” *State v. Ortega*, 220 Ariz. 320, ¶ 9, 206 P.3d 769, 772 (App. 2008), Frazier’s convictions did not arise from the same act or offense. Rather, as he acknowledged in giving the factual

basis for his guilty plea at his change of plea hearing, Frazier’s convictions arose from separate attempts to engage in sexual conduct with the victim, which occurred “on three different occasions.” Thus, although we grant the petition for review, we deny relief.

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Judge